

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	)	
	)	
Inventors: Guy Eden	)	
	)	
Serial No.: 09/859,660	)	ATTORNEY FILE NO.
	)	SLA1014
Filed: May 16, 2001	)	
	)	Customer No.: 55,286
Title: SYSTEM AND METHOD FOR	)	
DISCOVERING NETWORK	)	Examiner: Ramsey Refai
COMPONENTS	)	
	)	Confirmation No.: 3934
	)	
	)	Art Unit: 2152

Mail Stop Petitions  
Commission for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RENEWED PETITION UNDER 37 CFR 1.137(a)**

This paper is responsive to Decision mailed on July 21, 2008.

The Decision stated that the Petition to Revive, filed for the above-mentioned application under 37 CFR 1.137(a), was dismissed. The Decision stated that the Petition failed to show to the satisfaction of the Director that the entire delay, in failing to file an Appeal Brief that was compliant with 37 CFR 41.37(c), was unavoidable.

Remarks are presented on page 2 of this paper.

Enclosed as Attachment A is a copy of the Summary Section of the revised Appeal Brief, received at the PTO on October 30, 2006.

Enclosed as Attachment B is a copy of the Interview Summary, for the telephonic interview of March 1, 2007.

### **REMARKS**

The Decision states that the Applicant failed to present an argument for the failure to submit a compliant brief. In traverse, the Applicant submits that both the original and revised briefs were compliant with 37 CFR 41.37(c). The Petition to Revive was filed because of the failure of the USPTO and the Examiner to correctly apply the criteria established under 37 CFR 41.37(c). The purpose for the Petition to Revive was to have the Applicant's Brief reviewed to evaluate compliance under 37 CFR 41.37(c). The Decision did not address this issue

A Notification of Non-Compliant Appeal Brief was mailed on September 28, 2006. The Notice indicated that the Appeal Brief did not contain a concise explanation of subject matter for each of the independent claims, as required under 37 CFR 41.37 (c)(1)(v). In response, the Applicant filed a revised Appeal Brief, which was mailed on October 24, 2006.

As required by 37 CFR 41.37(c)(1)(v), the revised Appeal Brief concisely explains the subject matter of independent claims 1, 13, and 15, correlating the various claims elements to relevant portions of the specification and drawings. As can be seen in the *Summary of Claimed Subject Matter* (Attachment A), claim 1 is described, with citations made to page 15, line 9, through page 16, line 12, of the specification, referencing step numbers from Fig. 13.

Claim 13 is described with citations made to page 17, ln. 24, through page 18, line 9, of the specification, referencing steps numbers from Fig. 14. Claim 15 is described with citations to page 7, ln. 7, through page 8, line 2, of the specification, using the reference designators shown in Fig. 3.

A communication was mailed from the PTO on October 17, 2004 stated that the revised Appeal Brief was rejected under 37 CFR 41.37(c)(1)(v). No explanation or details were provided to support the rejection. Even a brief glance at the *Summary of Claimed Subject Matter* (Attachment A) will show that this rejection is improper and without merit. The Applicant's response stated that since the *Summary* Section provides a concise explanation of the independent claims, with specification page and lines numbers, and with reference to the drawings, that the Applicant's Brief was fully compliant.

A communication mailed from the PTO on February 15, 2007, also stating that the Appeal Brief was dismissed for failure to comply with 37 CFR 37 CFR 41.37(c). Again, no details were provided to support the rejection.

In a telephonic interview conducted on March 1, 2007, the Applicant spoke with Phillip C. Lee (Attachment B). Mr. Lee was unfamiliar with the Application. When the Applicant asked Mr. Lee why the Brief was non-compliant, Mr. Lee's response was that the file did not provide any insight into the reason for non-compliance. Mr. Lee was

unable to provide any suggestions as to measures the Applicant could pursue to cure the alleged non-compliance issue.

The rejection of the Appeal Brief also appears to be without merit. The Applicant has presented analysis for why the *Summary* Section of the Brief is complaint. None of the PTO Actions, including the most recent Decision, provide reasons for the rejection of the Brief. In the telephonic interview, the Applicant has asked for advice in curing the issues of non-compliance, but no reasons were provided for the rejection, and no advice was given for how the rejection could be traversed. In this Renewal of the Petition, the Applicant asks that the Appeal *Summary* Section be reviewed for compliance. If the Summary is indeed non-complaint, the Applicant requests that the reasons for non-compliance be provided.

Respectfully submitted,

Date: 9/13/2008

/Mali/  
Gerald Maliszewski  
Registration No. 38,054

Customer Number 55,286  
P.O. Box 270829  
San Diego, CA 92198-2829  
Telephone: (858) 451-9950  
Facsimile: (858) 451-9869  
[gerry@ipatentit.net](mailto:gerry@ipatentit.net)

## **ATTACHMENT A**

## **SUMMARY OF CLAIMED SUBJECT MATTER**

The problem addressed by the present invention is presented in the specification at page 1, line 11, through page 3, line 12. Generally, the problem is associated with network discovery. Upon initialization, a querying device (i.e., a personal computer) conventionally checks its list of network-connected components (e.g., a printer) by attempting to communicate with every device on the list. Once the list has been checked, the querying device builds a graphical user interface (GUI) to show a user the connected devices actually available (see Fig. 1). The problem occurs when a device is no longer connected to the network, or is turned off. Then, the querying device can wait for as long as 30 seconds for a response from a single device. If no response is received, and a timeout occurs, the GUI indicates that the device is not connected (see Fig. 2). However, a conventional GUI does not create a display, which indicates device availability, until all the device queries have been resolved.

The Applicant's solution to the problem is simple. Rather than waiting for all the devices to reply, the querying device first builds a GUI representation of network-connected devices, see the timing diagram of Fig. 8. Then, as devices either respond or timeouts occur, the GUI representation (availability) of a device is modified. A process for querying network-connected devices to determine availability (claim 1) is described at page 15, ln. 9, through page 16, ln. 12. In its broadest form, Step 1304 builds a GUI representation of network-connected device availability (see Fig. 13). Then, Step 1306 begins querying devices. As described in dependent claims, Step 1305 shows that the devices may initially be represented in the GUI as unavailable. If a reply is received

(Step 1308), the GUI is revised to show the device as available. If a timeout occurs (Step 1312), the device unavailable status is maintained (Step 1314). The device status initially represented in the GUI is arbitrary, since the GUI is updated with actual values once the query process is completed.

A method for building a GUI that represents device availability, independent of system timeouts (claim 13), is described at page 17, ln. 24, through page 18, ln. 9 (see Fig. 14). Step 1402 builds a GUI representing network-connected devices. Step 1404 initially represents devices as unavailable. Step 1406 modifies the GUI representation to show a device as available in response to receiving a communication from that device.

The invention is recited from a systems/device perspective in claim 15, which is described at page 7, ln. 7, through page 8, ln. 2 (see Fig. 3). A querying device 102 has a GUI 104 representing network-connected devices and a network port on line 118. After building the GUI, the querying device sends a query to at least one network-connected device (e.g., device 106). The GUI representation of the network-connected devices is updated in response to sending the query.

## **ATTACHMENT B**





# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,660	05/16/2001	Guy Eden	SLA 1014	3934
55286	7590	02/15/2007	EXAMINER	
SHARP LABORATORIES OF AMERICA, INC. C/O LAW OFFICE OF GERALD MALISZEWSKI P.O. BOX 270829 SAN DIEGO, CA 92198-2829			ART UNIT	PAPER NUMBER

DATE MAILED: 02/15/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication Re: Appeal**

Application No.

09/859,660

Examiner

Ramsey Refai

Applicant(s)

EDEN, GUY

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
- (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

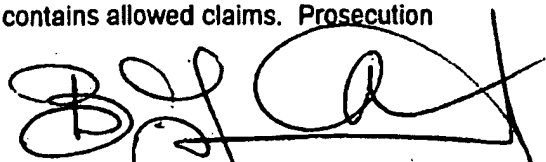
The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
- (d) ☒ other: Failure to comply with 37 CFR § 41.37 (c).

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

  
BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER